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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,233	04/16/2004	Yin-Chu Lai	3079D-0224	7774
22429 7590 02/23/2007 LOWE HAUPTMAN BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314			EXAMINER LANDRUM, EDWARD F	
			ART UNIT 3724	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/825,233	LAI, YIN-CHU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Edward F. Landrum	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 9-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 9-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/29/2006.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fork and bottle cap opener must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 7, and 8 rejected under 35 U.S.C. 102(b) as being anticipated by Murdock et al (U.S Patent No. 2,803,059), hereinafter Murdock.

Murdock teaches (see Figures 1-3) a spoon comprising a main part having a utility portion (10) and a handle-connecting portion (24) opposite the utility portion (10). A cone shaped opening (see Figure 2) is provided in the handle-connecting portion (24). A handle (25) made of plastic (Col. 2, lines 25-29), capable of being formed by extruding, injection shaping, and melting, and it tightly connected to the interior of the handle-connecting portion (24).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murdock in view of Gomas (U.S Patent No. 5,740,586).

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Examiner is using this definition for the term "hole": A hollowed place in something solid.<sup>1</sup>

Murdock teaches all of the elements of the current invention as stated above except the handle-connecting portion comprising a fixing hole.

Gomas teaches (see Figures 1 and 4; also see Col. 3, lines 4-40) injection molding an element (20) inside another element (22). A hole (36) in the outer element (22) allows a projection (38) to form in the inner element to lock the elements in place with respect to each other.

It would have been obvious to have modified Murdock to incorporate the teachings of Gomas to provide a hole in the handle receiving portion of the main part for the insertion of a complementary protrusion on the handle, doing so would provide a better lock between the main portion and the handle, thereby making it more difficult for the handle to fall out while being used.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murdock in view of Dunn (U.S Patent No. 3,008,358).

Murdock teaches all of the elements of the current invention as stated above except the main portion being made of metal and capable of being formed by a punch press.

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<sup>1</sup> "hole." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 08 Feb. 2007. <Dictionary.com <http://dictionary.reference.com/browse/hole>>.

Dunn teaches (see Figures 1-5) it is old and well known in the art to form the head of a spoon in a punch press.

It would have been obvious to have modified Murdock to incorporate the teachings of Dunn to make the main portion out of metal and formed in a punch press. Metal is a common material used in spoons and would be more durable than a rubber head and therefore would increase the life of the spoon.

### ***Double Patenting***

8. Claims 1, 2, 5, and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,607,225. Although the conflicting claims are not identical, they are not patentably distinct from each other because Patent '225 teaches a piece of tableware with a main portion and a handle portion. The main portion has two ends, one end being the utility portion and an opposite end being the handle-connecting portion that has a flared opening. The main portion is made of metal and therefore capable of being formed by press punching and there is a fixing hole in the handle-connecting portion. The handle is injection molded into the main portion.

9. Claims 3, 4, and 7 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,607,225 in view of Murdock.

Patent '225 teaches all of the elements of the current invention except the handle connecting portion being in the form of a hollow barrel and the handle being made of plastic.

Murdock teaches a cone shaped opening (see Figure 2) is provided in the handle-connecting portion (24). A handle (25) made of plastic (Col. 2, lines 25-29), capable of being formed by extruding, injection shaping, and melting, and it tightly connected to the interior of the handle-connecting portion (24).

It would have been an obvious design choice to have modified Patent '225 to incorporate the teachings of Murdock to make the handle connecting portion hollow barrel shaped and make the handle out of plastic as Figure 2 and Col. 2, lines 32-33 of Patent '225 already teach a hollow barrel design, and Patent '225 in Col. 2, lines 41-48 teach the handle being made of plastic. Furthermore, making the handle connecting portion a hollow barrel shape would increase the surface area connecting the main portion and the handle portion thereby providing a stronger connection between the two. Making the handle out of plastic would decrease cost as plastic is a common material used in injection molding processes.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gardner (U.S Patent No. 696), Beals et al (U.S Patent No. 222,229), Frank (U.S Patent No. 4,065,244), Crane et al (U.S Patent No. 6,105,254), and Forsline (U.S Patent No. 2001/0042281) teach elements of the current invention.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA-OR CANADA) or 571-272-1000.

EFL

2/8/2007



**BOYER D. ASHLEY**  
SUPERVISORY PATENT EXAMINER